

UNITED STATES INTERNATIONAL TRADE COMMISSION

DESKTOP NOTE COUNTERS AND SCANNERS FROM CHINA, KOREA, AND THE  
UNITED KINGDOM

Investigations Nos. 731-TA-885-887 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION  
(USITC Publication No. 3348, September 2000)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-885-887 (Preliminary)

## DESKTOP NOTE COUNTERS AND SCANNERS FROM CHINA, KOREA, AND THE UNITED KINGDOM

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China, Korea, and the United Kingdom of desktop note counters and scanners, provided for in subheading 8472.90.95 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### BACKGROUND

On July 17, 2000, a petition was filed with the Commission and the Department of Commerce by Cummins-Allison, Mt. Prospect, IL, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of desktop note counters and scanners from China, Korea, and the United Kingdom. Accordingly, effective July 17, 2000, the Commission instituted antidumping duty investigations Nos. 731-TA-885-887 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of July 25, 2000 (65 FR 49224). The conference was held in Washington, DC, on August 7, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioner Bragg dissenting.

## **VIEWS OF THE COMMISSION**

Based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of desktop note counters and scanners from China, Korea, and the United Kingdom that are allegedly sold in the United States at less than fair value (“LTFV”).<sup>3 4 5</sup>

### **I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS**

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>6</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>7</sup> For the reasons stated below, we find that the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury to the domestic industry, and no likelihood exists that contrary evidence will arise in a final investigation.

### **II. DOMESTIC LIKE PRODUCT AND INDUSTRY**

#### **A. In General**

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>8</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>9</sup> In turn, the Act defines “domestic like product” as “a

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<sup>3</sup> Commissioner Lynn M. Bragg dissenting. Commissioner Bragg joins section I, II (with the exception of related parties), and III.

<sup>4</sup> Commissioner Thelma J. Askey concurs with the Commission’s determination but writes separately to explain her views. She joins sections I, II A-C, and III.

<sup>5</sup> There is no issue in these investigations regarding whether there is a reasonable indication that a domestic industry is materially retarded by reason of subject imports.

<sup>6</sup> 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

<sup>7</sup> American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(4)(A).

product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>10</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>11</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>12</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>13</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>14</sup>

## **B. Product Description**

In its notice of institution, Commerce defined the scope of these investigations as follows:

The products covered by these investigations are commonly referred to as desktop note counters (“counters”) and desktop note scanners (“scanners”), whether assembled, partially assembled or unassembled, with or without operation-enabling software loaded. Counters and scanners are document handling machines that employ an electro-mechanical processing mechanism to accurately count currency bills, bank notes, coupons, script, or other value-based paper documents and to stack them in an organized fashion. The processing mechanism typically encompasses a feeder assembly from which documents are separated and introduced into the machine, a paper path through which the documents are fed, a transport mechanism, a sensing device located

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<sup>10</sup> 19 U.S.C. § 1677(10).

<sup>11</sup> See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (CIT, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (CIT 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996).

<sup>12</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>13</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>14</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

along the paper path that counts the documents, and a stacking location (or locations) that accepts the documents after counting and/or arranging them. Counters and scanners also have an integrated keypad, or keyboard, and a display panel. Both counters and scanners can incorporate a sensor device for detecting suspect (i.e., counterfeit) documents. Scanners have additional sensors, or scanning devices, that enable the machines to distinguish documents by denomination. Scanners and counters may consist of one or more stacker assemblies to accommodate bill sorting. The counters and scanners subject to these investigations are portable; they typically weigh less than 100 pounds and may be easily moved by hand from one location to another.

Specifically excluded from the scope of these investigations are counters and scanners that are too large to be considered portable, or desktop, which are typically designed for very high volume use in regional and headquarter vaults of commercial banks and central bank vaults. However, the simple attachment of weights, stands, wheels, or similar devices does not, by itself, remove an otherwise portable counter or scanner from the scope of these investigations. Other document and currency handling machines, such as currency wrappers, currency verifiers, bundle counters, coin-handling machines, bill-accepting devices used in vending machines, and ATM machines, also are excluded from the scope of these investigations.

Imports of counters and scanners are currently classifiable under subheading 8472.90.9520 of the Harmonized Tariff Schedule of the United States.<sup>15</sup>

### **C. Domestic Like Product Issues**

Petitioner Cummins-Allison and one respondent, Magner Corp., argued that desktop note counters and scanners represent a single domestic like product. The remainder of the respondents urged the Commission to find two separate like products consisting of desktop note counters and desktop note scanners. Based on the record developed in these preliminary investigations, we determine that there is a single like product comprised of both desktop note counters and scanners.

Desktop note counters and scanners are portable machines designed to count documents, such as currency notes, and provide an operator with the number of documents or notes counted. Scanners have the added capability of denominating currency using a scanning device located along the machine's paper path.<sup>16</sup> A scanner may provide the operator with the total value of a stack of currency and the number of each denomination in the stack of notes, in addition to the number of documents scanned. Both counters and scanners may be equipped with counterfeit detection sensors.<sup>17</sup> The petitioner first developed and produced scanners; later, it developed a

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<sup>15</sup> Notice of Initiation, 65 Fed. Reg. 49224 (Aug. 11, 2000).

<sup>16</sup> CR at I-2; PR at 1-2.

<sup>17</sup> CR at I-2; PR at 1-2.

line of counters.<sup>18</sup> These counters are similar in many respects to its scanners but do not have the ability to recognize denominations.<sup>19</sup>

Domestically produced counters and scanners are manufactured with a wide range of options and capabilities. For example, Cummins-Allison produces a basic counter that has no counterfeit detection capability; a counter that is equipped with counterfeit detection sensors and software; a basic scanner that has no counterfeit detection capabilities; and a scanner equipped with counterfeit detection sensor(s) and software.<sup>20</sup>

***Physical Characteristics and End Uses.*** Scanners and counters share the same basic physical characteristics and end uses. Counters and scanners are both machines designed to count documents, primarily paper currency. Scanners are essentially counters with the added functionality of sensors and software that allow them to differentiate between various currency denominations (e.g., five, ten, or twenty dollar bills) in a stack of notes, and to calculate the total value of the stack. Similarly, many models of counters contain a counting function that calculates the total value of a stack of notes of the same denomination.

Although there are physical and end use differences between scanners and counters, the physical characteristics of scanners and counters can be described as a continuum of functional features (or add-ons) beginning with the most basic note counter with only a counting function and designed for light processing volumes, and ending with the most sophisticated heavy-duty scanner containing all possible features.<sup>21</sup> These added features may include forgery/counterfeit recognition sensors and software,<sup>22</sup> varying types of counting functions, faster and more variable counting speed, and a wide assortment of keypad and display panels.<sup>23</sup>

***Interchangeability.*** Counters and scanners are interchangeable to a certain extent. A scanner can be used as a counter (i.e., to count the number of currency notes in a stack), although a counter cannot be used as a scanner (i.e., to identify specific denominations in a stack containing several denominations of currency notes).<sup>24</sup>

***Channels of Distribution.*** Counters and scanners are sold through similar channels of distribution. The two companies currently producing counters and/or scanners in the United States, petitioner Cummins-Allison and De La Rue, Inc. (“De La Rue U.S.”), sell both devices through their own exclusive distributors directly to end users.<sup>25</sup> Petitioner and De La Rue U.S.

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<sup>18</sup> Prior to 1996 petitioner imported counters made in Japan. When the cost of Japanese counters increased, petitioner elected to produce its own counters domestically. CR at III-1 - III-2; PR at III-1.

<sup>19</sup> Pet. Br. at A-18 - A-20.

<sup>20</sup> CR at V-4; PR at V-3 - V-4.

<sup>21</sup> CR at V-4; PR at V-3 - V-4.

<sup>22</sup> These sensors can be ultraviolet, magnetic ink or both.

<sup>23</sup> CR at V-3 - V-5; PR at V-3 - V-4. Petitioner described a variety of sensors that can be included in a counter or scanner to contribute additional functionality. Pet. Br. at A-15 -A-17.

<sup>24</sup> Conf. Tr. at 13-18.

<sup>25</sup> CR at II-1; PR at II-1. We note that De La Rue U.S. has not produced scanners in the United States since October 1998.

provide technical service and support contracts for their counters and scanners through their distributors.<sup>26</sup>

***Common Manufacturing Facilities/Production Workers.*** Cummins-Allison uses the same assembly line and the same production workers to produce counters and scanners. Prior to 1998, De La Rue U.S. produced counters and scanners using different manufacturing facilities in Watertown and in Bensalem, WI. Since October 1998 De La Rue U.S. has produced only counters at its facility in Waterton, WI. However, in September of 2000, De La Rue U.S. is scheduled to begin scanner production at its Waterton facility.<sup>27</sup>

***Customer or Producer Perceptions.*** Customers such as small grocery stores, seasonal boardwalk businesses, and bingo halls buy primarily basic, or low end, counters.<sup>28</sup> These customers do not perceive counters and scanners to be similar because their processing volume requirements are so low (i.e., half an hour per day on average) that the added scanning capability is not necessary and may be cost prohibitive. In contrast, customers such as financial institutions and large gaming operations purchase scanners as well as high-end counters, each to fulfill a specific function.<sup>29</sup> Because scanners are much more expensive than counters, customers generally will purchase scanners only when they have a specific need for scanning capabilities; otherwise they will purchase counters.<sup>30</sup>

***Price.*** The pricing data in the domestic producer questionnaires show that scanners are sold at substantially higher prices than even high-end counters.<sup>31</sup> Cummins-Allison's basic counters, without counterfeit recognition, were priced between \$\*\*\* to \$\*\*\* per unit over the period of investigation.<sup>32</sup> Cummins-Allison's more advanced counters, with counterfeit recognition, ranged from \$\*\*\* to \$\*\*\* per unit over the period of investigation.<sup>33</sup> Cummins-Allison's basic scanners, without counterfeit recognition, ranged from \$\*\*\* to \$\*\*\*, while those with counterfeit recognition ranged from \$\*\*\* to \$\*\*\* per unit over the period of investigation.<sup>34</sup>

***Conclusion.*** Although factors such as price and customer perceptions demonstrate differences between counters and scanners, we find that the similar physical characteristics and end uses of the two products, their shared manufacturing facilities and workers, their interchangeability for certain basic applications, and their similar channels of distribution weigh in favor of a single like product finding. Therefore, we find a single domestic like product consisting of desktop note counters and scanners.

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<sup>26</sup> CR at II-1 - II-2; PR at II-1.

<sup>27</sup> CR at III-2; PR at III-1.

<sup>28</sup> De La Rue Br. Exhibit 5 at E72.

<sup>29</sup> Petition at 42.

<sup>30</sup> Petition at 42.

<sup>31</sup> CR & PR Tables V-1 - V-9.

<sup>32</sup> CR & PR Table V-1.

<sup>33</sup> CR & PR Table V-5.

<sup>34</sup> CR & PR Tables V-8 - V-9.

#### **D. Domestic Industry and Related Parties**<sup>35</sup>

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . . .”<sup>36</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>37</sup> Based on our finding that the domestic like product consists of both counters and scanners, we conclude that the domestic industry consists of all domestic producers of both products.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>38</sup> Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.<sup>39 40</sup>

De La Rue U.S. is a domestic producer of the like product, accounting for \*\*\* percent of domestic production in 1999, and is itself an importer of the subject merchandise.<sup>41</sup> De La Rue U.S. also is a \*\*\* of De La Rue, PLC (“De La Rue U.K.”), a foreign producer and exporter of the subject merchandise from the United Kingdom.<sup>42</sup> We find that De La Rue U.K. directly or indirectly controls De La Rue U.S.,<sup>43</sup> and therefore De La Rue U.S. is a related party.

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<sup>35</sup> Commissioner Askey does not join this section.

<sup>36</sup> 19 U.S.C. § 1677(4)(A).

<sup>37</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>38</sup> 19 U.S.C. § 1677(4)(B).

<sup>39</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (CIT 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, *e.g.*, Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

<sup>40</sup> Commissioner Bragg does not join the remainder of this section. As set forth in her separate views, she finds that appropriate circumstances do not exist to exclude De La Rue U.S. from the domestic industry as a related party.

<sup>41</sup> De La Rue U.S. accounted for \*\*\* percent of domestic production of counters (excluding scanners). CR at III-1; PR at III-1. We note that petitioner alleged several times in its petition and at the Staff Conference that it was the sole domestic producer of counters.

<sup>42</sup> De La Rue Br. at 1.

<sup>43</sup> In particular, a “strategic decision” by De La Rue U.K. in September 1998 led to the consolidation of scanner production in the United Kingdom and the closure of the De La Rue U.S. facility in Bensalem, PA. In June 2000,

(continued...)



We further find that, on balance, the evidence indicates that appropriate circumstances exist to exclude De La Rue U.S. from the domestic industry.<sup>44</sup> First, De La Rue U.S. is a significant importer of subject merchandise. It accounted for \*\*\* percent of total counter imports and \*\*\* percent of total U.S. scanner imports in 1999, for a total of \*\*\* percent of counter and scanner imports combined.<sup>45</sup> Although De La Rue U.S.'s domestic production of counters and scanners exceeded its imports of subject counters and scanners from \*\*\*, the ratio of subject imports to domestic production increased steadily and substantially throughout the period of investigation.<sup>46</sup> In addition, De La Rue U.S.'s ratio of U.S. shipments of subject merchandise in comparison to its shipments of domestically manufactured counters and scanners was even higher because most of its U.S. production during the period of investigation was dedicated to export sales.<sup>47</sup>

Moreover, the record indicates that decision making authority for De La Rue U.S. is centered in De La Rue U.K., which is both a foreign producer and exporter of subject merchandise. Whether and to what extent De La Rue U.S. produces counters and/or scanners in the United States is a matter of operational decisions made in the United Kingdom. Finally, De La Rue U.K. filed a brief in opposition to the petition on behalf of itself and of De La Rue U.S. In addition, De La Rue U.S. appeared at the Staff Conference as a respondent in these investigations.<sup>48</sup> For these reasons, we determine that De La Rue's primary interest does not lie with domestic production, and therefore, we exclude it from the domestic industry.

Therefore, consistent with our like product finding, we find one domestic industry currently consisting of one manufacturer of desktop note counters and desktop note scanners, Cummins-Allison.<sup>49</sup>

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<sup>43</sup> (...continued)

De La Rue U.K. announced that it would return scanner production in September to De La Rue's remaining production facility in Watertown, WI (where it has been steadily decreasing counter production in order to consolidate product offerings and reduce product overlap between De La Rue U.S. and De La Rue U.K.). See, e.g., CR at III-2 and III-3 n.8.

<sup>44</sup> We note, however, that including De La Rue U.S. in the domestic industry would not affect our ultimate determination as to the lack of a reasonable indication of material injury and lack of a reasonable indication of threat of material injury by reason of subject imports.

<sup>45</sup> CR & PR Tables IV-1 - IV-2.

<sup>46</sup> De La Rue U.S. domestically manufactured \*\*\* counters and scanners in 1997, \*\*\* in 1998, and \*\*\* in 1999. It imported (from \*\*\*) \*\*\* counters and scanners in 1997, \*\*\* in 1998, and \*\*\* in 1999. De La Rue Questionnaire responses at 5-6. We also note that the value added by De La Rue U.S.'s domestic production was only \*\*\*. CR at VI-7; PR at VI-5.

<sup>47</sup> De La Rue's U.S. shipments of domestically manufactured counters and scanners were \*\*\* units in 1997, \*\*\* in 1998, and \*\*\* in 1999. Its U.S. shipments of subject merchandise (from \*\*\*) were \*\*\* units in 1997, \*\*\* in 1998, and \*\*\* in 1999. De La Rue Questionnaire responses at 5-6.

<sup>48</sup> We note that the record evidence is mixed regarding whether De La Rue U.S. benefitted financially from its relationship with De La Rue U.K. or from being an importer.

<sup>49</sup> A third company, G&D, manufactured counters and scanners during the period of investigation, accounting for \*\*\* percent of total domestic production in 1999. G&D ceased production of counters in 1998 but continued to produce scanners until December 1999, when it ceased production as a result of a patent infringement suit against it by Cummins-Allison. CR at III-2; PR at III-2.

### III. CUMULATION<sup>50</sup>

#### A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.<sup>51</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>52</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>53</sup>

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>54</sup> Only a “reasonable overlap” of competition is required.<sup>55</sup>

#### B. Analysis

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<sup>50</sup> Commissioners Bragg and Askey join this section of the opinion.

<sup>51</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>52</sup> The SAA at 848 expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition,” citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>53</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>54</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>55</sup> See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand and Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

We cumulate the subject imports from China, Korea, and the United Kingdom for purposes of our analysis of present material injury. The petitions were filed on the same day. We find that there is a reasonable, although limited, overlap of competition among imports from each of the subject countries and between subject imports and the domestic like product.

First, there is a moderate level of interchangeability among the subject imports and the domestic merchandise, although it is somewhat limited. The questionnaire data show that imports from Korea and China, which consisted only of counters, are highly interchangeable with each other but only moderately so with domestic counters,<sup>56</sup> and very little, if at all, with domestic scanners.<sup>57 58</sup> Imports from the United Kingdom, which consisted of both counters and scanners, are moderately interchangeable with imports from China and Korea and more interchangeable with the domestic like product.<sup>59</sup> Overall, based on the record evidence, the subject imports appear to be moderately interchangeable with the domestic like product and each other.

Second, there is a geographic overlap in sales among the subject imports and the domestic like product. Cummins-Allison, De La Rue U.S., and most of the other major importers reported that they sell counters and scanners nationwide.<sup>60</sup> Imports of the subject merchandise from all three countries were present over the course of the period of investigation,<sup>61</sup> and therefore were simultaneously present in the marketplace.<sup>62</sup>

Finally, there are similarities, albeit limited, in channels of distribution between the subject imports and the domestic like product. Domestically produced scanners and counters and imports of the subject merchandise from the United Kingdom are sold directly to end users through a network of distributors. Subject imports from China and Korea generally are sold by importers to independent distributors, who in turn mark up the price to end users by between 35 and 50 percent.<sup>63</sup> Still, some importers do sell directly to end users through Internet sales.<sup>64</sup>

Based on a consideration of these factors, we find that there is a reasonable, but limited, overlap of competition among the subject imports from China, Korea, and the United Kingdom, and between the subject imports and the domestic like product. Consequently, we cumulate subject imports from China, Korea, and the United Kingdom.

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<sup>56</sup> CR at II-8; PR at II-5 (from importer questionnaires).

<sup>57</sup> CR at II-8 - II-9; PR at II-5 - II-6.

<sup>58</sup> Commissioner Bragg does not join this statement.

<sup>59</sup> CR at II-8 - II-10; PR at II-5 - II-7. Counters and scanners each accounted for a significant portion of U.S. shipments by both the U.S. and U.K. industries. For example, in 1999, U.S. shipments of subject imports from the United Kingdom totaled \*\*\* counters and \*\*\* scanners, and the U.S. industry's shipped \*\*\* counters and \*\*\* scanners. CR & PR Tables C-4 - C-5.

<sup>60</sup> CR at V-2; PR at V-1; see e.g., CR at II-1, IV-1; PR at II-1, IV-1; see also, questionnaire responses.

<sup>61</sup> CR & PR Table C-6. We note, however, that Korea did not begin exporting in commercially significant volumes to the U.S. market until 1998.

<sup>62</sup> See also, Pet. Br. at 7.

<sup>63</sup> Magner Br. at 31 citing Conf. Tr. at 77.

<sup>64</sup> CR at V-22; PR at V-8.

#### **IV. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**<sup>65</sup>

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>66</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>67</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>68</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>69</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>70</sup>

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from China, Korea, and the United Kingdom that are allegedly sold in the United States at less than fair value.

##### **A. Conditions of Competition**

We find several conditions of competition relevant to these investigations.

Demand for note counters constitutes the majority of overall demand for the currency handling devices that are the subject of these investigations.<sup>71</sup> The record indicates that consumption of counters and scanners has been growing considerably,<sup>72</sup> rising \*\*\* percent from 1997 to 1999. Consumption was \*\*\* percent higher in January-March (“interim”) 2000 than in 1999. Consumption also grew for both counters and scanners separately. Apparent consumption of counters grew by \*\*\* percent between 1997 and 1999, and was \*\*\* percent higher in interim

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<sup>65</sup> Commissioners Bragg and Askey do not join the remainder of this opinion.

<sup>66</sup> 19 U.S.C. § 1671b(a) and 1673b(a).

<sup>67</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also, *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>68</sup> 19 U.S.C. § 1677(7)(A).

<sup>69</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>70</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>71</sup> CR & PR Tables IV-3 - IV-4.

<sup>72</sup> Petitioner alleged that domestic demand for counters and scanners has remained relatively constant since 1997 due to the restructuring of the U.S. banking industry. CR at II-6; PR at II-3.

2000 compared to interim 1999.<sup>73</sup> Scanner consumption grew at an even faster rate, rising by \*\*\* percent between 1997 and 1999.<sup>74</sup>

We find that the limited degree of competition between scanners and counters, as well as among the different types of counters and among the different types of scanners, is an important condition of competition. There is a clear distinction between counters and scanners, given the significantly higher prices for scanners; the tendency for purchasers to purchase scanners only when they need denomination recognition features; and the fact that purchasers who need denomination recognition features must buy scanners and not counters.<sup>75</sup> The record also indicates that there are several distinct types of scanners and counters with differences in capability, durability, and overall functionality, and selling at distinct price points. The pricing data collected in this investigation provide direct evidence that these different types of products, sold at very different prices, can all be in the market at the same time.<sup>76</sup> For example, with respect to product 1 (basic note counter, without counterfeit detection capability), Cummins-Allison's prices were roughly half those of De La Rue U.S., yet both sold substantial quantities.<sup>77</sup> With respect to both product 1 and product 2 (basic note counter with counterfeit detection capability), prices for many subject imports were substantially lower than those for Cummins-Allison and De La Rue U.S.,<sup>78</sup> yet Cummins-Allison and De La Rue U.S. maintained substantial volumes and, as discussed below, their prices generally remained stable. We find that differentiation between product types explains how Cummins-Allison and De La Rue U.S. could maintain their substantial volumes and prices in the face of such persistent underselling.

Petitioner's counters mainly compete in the mid- to high-range of the market dominated by customers requiring high quality, heavy-duty machines that can handle large volumes of notes; the kind of machines respondents market as their "deluxe" models.<sup>79</sup> These higher-end machines primarily compete with petitioner's machines and with De La Rue U.S.'s higher-end models.<sup>80</sup> Low-end counters, mainly from China and Korea, are not designed to handle high volumes of throughput over extended periods of time.<sup>81</sup> These low-end counters seldom compete for the

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<sup>73</sup> CR & PR Tables IV-3 - IV-4.

<sup>74</sup> CR & PR Table IV-4. Scanner consumption in interim 2000 (\*\*\* units) was similar to that in interim 1999 (\*\*\* units).

<sup>75</sup> Petition at 42.

<sup>76</sup> CR & PR Tables V-1 - V-9.

<sup>77</sup> CR & PR Tables V-1 - V-5.

<sup>78</sup> Prices for several importers were those to distributors. Several importers indicated that distributors will mark-up prices by 35 to 50 percent when selling to end-users. CR at V-20, PR at V-7. Even with this level of mark-up, prices for subject imports from Korea and China were persistently and significantly below those for Cummins-Allison's and De La Rue's products. See CR & PR Tables V-1 to V-7.

<sup>79</sup> See e.g., De La Rue Br. Exhibit 5 at E72 (De La Rue U.S. sells its high volume counters almost entirely to large institutional customers, but sells none to the low-volume customers). Scanners and high volume counters are primarily sold to financial institutions, the gaming industry, and large retail operations that require direct technical support and repair services from their suppliers. See, CR at II-5 - II-7; PR at PR at II-3-II-4.

<sup>80</sup> Magner Br. at 32.

<sup>81</sup> Magner Br. at 27-29.

same customers that purchase petitioner's counters, and almost never compete for customers that purchase petitioner's scanners.<sup>82</sup>

The record indicates that petitioner's counters are essentially versions of its high-end, heavy-duty scanner but with scanning capabilities removed. Petitioner testified that it had first developed and produced its scanners and later launched its own line of domestically produced counters, which were functionally lesser versions of its scanners.<sup>83</sup> This is reflected by petitioner's four general products: (a) scanners with counterfeit detection; (b) scanners without counterfeit detection; (c) counters with counterfeit detection; and (d) counters without counterfeit detection.<sup>84</sup> The three latter products are versions of the first product, using the same housing and physical components, but with fewer functions.<sup>85</sup> Because petitioner's product line, including its counters, consists of versions of a high-end model, it does not produce a machine that is designed for lower volume, lesser duty applications, such as for small customers that require an inexpensive machine designed to operate an average of half an hour per day.<sup>86</sup>

There are a limited number of suppliers capable of supplying counters and scanners. Petitioner supplies both counters and scanners, as does \*\*\*, the primary source of nonsubject imports of counters and scanners. De La Rue U.S. supplies both devices though a combination of direct importation from the \*\*\* and U.S. production (counters at present, scanners by September 2000). G&D, a former domestic producer of note counters and scanners, produced and sold both devices but halted its U.S. counter production in 1998 and its U.S. scanner production in late 1999.<sup>87</sup> The other principal sources of imports (subject countries China and Korea) export counters to the United States.

Finally, nonsubject imports of both counters and scanners from Japan have a substantial presence in the U.S. market.<sup>88</sup> Imports of scanners from Japan increased from \*\*\* units in 1997 to \*\*\* units in 1999, a \*\*\* percent increase over the period of investigation, while imports of counters from Japan increased between 1997 and 1999 from \*\*\* units to \*\*\* units.<sup>89</sup> In 1999, counter imports from Japan accounted for \*\*\* percent of total imports of counters. Scanners from Japan accounted for \*\*\* percent of total imports of scanners, and counters and scanners combined accounted for \*\*\* percent of total imports in 1999.<sup>90</sup> The record reflects that Japanese

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<sup>82</sup> Lead time is also an important distinction between petitioner's high-end note counters and scanners, and low-end counters. Petitioner reported its lead times were \*\*\* whereas importers, including \*\*\*, reported lead times ranging from \*\*\*. CR at II-7; PR at II-5. (\*\*\*) is the only respondent to report lead times of \*\*\*). Moreover, Magner provides service and support for its high-end products from Japan, which it sells through its own distribution network. In contrast, Magner's low-end counters are sold through an entirely different network of independent distributors that offer their own repair and support services. Magner Br. At 32.

<sup>83</sup> Conf. Tr. at 7-12, 47; CR at III-1 - III-2; PR at III-1.

<sup>84</sup> Conf. Tr. at 7-12, 47.

<sup>85</sup> Conf. Tr. at 7-12, 47.

<sup>86</sup> CR at V-22, PR at V-18; Magner Br. at 27-29.

<sup>87</sup> CR at III-2; Pr at III-2.

<sup>88</sup> \*\*\*. CR at IV-1 n. 1; PR at IV-1, n. 1.

<sup>89</sup> CR & PR Tables IV-1 - IV-2.

<sup>90</sup> CR & PR Table C-1 - C-2. Indeed, petitioner acknowledged substantial competition from imports from Japan, Conf. Tr. at 11, 35-36. Petitioner stated that it did not bring a petition against imports from Japan because it would not meet the injury requirements "under [Commission] rules." Petitioner also stated that prior to a

(continued...)

currency handling devices compete directly with higher-end scanners and counters, and are always interchangeable with domestically produced machines.<sup>91</sup>

## **B. Volume**

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>92</sup>

The volume of the subject imports increased both in terms of units shipped and market share throughout the period of investigation. Subject imports of counters and scanners increased from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>93</sup> Subject imports were higher in interim 2000 (\*\*\* units) than they were in interim 1999 (\*\*\* units). Market share data reflect similar trends. Market share of subject import shipments increased from \*\*\* percent in 1997 to \*\*\* percent in 1999, and was \*\*\* percent in interim 1999 compared to \*\*\* percent in interim 2000.<sup>94</sup>

The increase in volume and market share of subject imports during the period of investigation, when viewed in isolation, is significant. However, when evaluated in the context of the conditions of competition and in the absence of significant negative price effects, the volume of subject imports, and the increase in the volume, are not sufficient to demonstrate that the subject imports themselves made a material contribution to any injury to the domestic industry.

## **C. Price Effects of the Subject Imports**

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>95</sup>

The Commission requested U.S. producers and importers of counters and scanners to provide quarterly data for the total quantity and value of counters and scanners that were shipped to unrelated customers in the U.S. market. Data were requested for the period January 1997 through March 2000 on four general types of machines; two types of counters (products 1 and 2)

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<sup>90</sup> (...continued)

successful patent infringement case against a Japanese producer and exporter of scanners and counters, scanners from Japan sold for 30 to 40 percent less than comparable domestically manufactured scanners. Conf. Tr. at 36.

<sup>91</sup> CR at II-10; PR at II-7.

<sup>92</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>93</sup> CR & PR Table IV-1 - IV-2.

<sup>94</sup> Market share as calculated from import shipments. CR & PR Table C-6.

<sup>95</sup> 19 U.S.C. § 1677(7)(C)(ii).

and two types of scanners (products 3 and 4).<sup>96</sup> The price data received by the Commission accounted for 100 percent of domestic shipments and 100 percent of subject imports. Subject imports of counters undersold the domestic product in approximately two-thirds of the comparisons, but subject imports of scanners generally oversold the domestic product.<sup>97</sup> However, we do not find the underselling that did exist to be significant because it had no significant effect on domestic prices, reflecting to a great degree limited competition among differentiated product types.

The domestic industry's prices for product 1, which sells at substantially higher volumes than product 2, were essentially unchanged from the third quarter of 1997 to the end of the period of investigation.<sup>98</sup> Prices for product 2 remained stable through most of the period of investigation, and declined a modest \*\*\* percent in the last 4 quarters of the period of investigation.<sup>99</sup> The price of product 3 increased substantially from \$\*\*\* per unit in the first quarter of 1997 to \$\*\*\* in the first quarter of 2000. The price of product 4 remained relatively stable throughout the period of investigation, beginning in the first quarter of 1999 at \$\*\*\* per unit and ending the first quarter of 2000 at \$\*\*\*.<sup>100</sup>

We do not find any clear evidence of significant price depression, as prices generally rose or remained stable, with at most a slight decline at the end of the period of investigation for only one of the four products surveyed. Also, we do not see any clear correlation between underselling and the movement of prices. Prices declined slightly for products 2 and 4 (comparing first quarter 1997 to first quarter 2000), but there was underselling only with respect to product 2. Since early in the period of investigation, prices for products 1 and 3 were generally stable or increasing (prices for product 1 fluctuated between third quarter 1997 and first quarter 2000, but ended at effectively the same level) despite underselling with respect to product 1. Moreover, for products 1 and 2 domestic prices fluctuated from quarter to quarter. These varying price trends in the face of substantial underselling indicate a lack of price depression by subject imports. For these reasons we find that the subject imports did not depress domestic prices to a significant degree. Rather, as discussed above, lack of competition among differentiated product types enabled domestic prices for high-end counters to remain essentially stable despite the presence in the market of lower priced subject imports.<sup>101</sup>

We also do not find that subject imports suppressed domestic prices to a significant degree. The ratio of cost of goods sold to net sales of counters declined from \*\*\* to \*\*\* percent

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<sup>96</sup> CR at V-4; PR at V-3 - V-4.

<sup>97</sup> See CR & PR Tables V1 - V-9. Even with 35 to 50 percent markup by independent distributors, prices for subject imports from China and Korea were persistently and significantly below prices reported by Cummins-Allison and De La Rue U.S. See CR & PR Tables V-1 - V-7.

<sup>98</sup> CR & PR Table V-1.

<sup>99</sup> CR & PR Table V-5.

<sup>100</sup> CR & PR Table V-9.

<sup>101</sup> While we excluded De La Rue U.S. from the domestic industry, we note that De La Rue's prices for products 1 and 2 increased over the period of investigation and were significantly higher than petitioner's prices. For 1997, and 1998, the years De La Rue U.S. produced products 3 and 4, the data show prices for product 3 declining slightly and those for product 4 increasing slightly. Prices for both products were significantly above petitioner's. CR & PR Tables V-1 and V-5.



during the period of investigation,<sup>102</sup> suggesting that prices are not being suppressed relative to costs. The ratio of cost of goods sold to net sales of scanners also declined from \*\*\* to \*\*\* percent during the period of investigation,<sup>103</sup> while the prices of U.S.-produced scanners increased significantly.<sup>104</sup> Thus, we do not find significant price suppression by the subject imports.

Accordingly, we find that the subject imports did not adversely affect prices for the domestic like product to a significant degree.

#### **D. Impact**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>105</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>106 107</sup>

We do not find that the subject imports had a material adverse impact on the domestic industry. Although subject imports increased during the period of investigation and generally undersold domestic merchandise, the domestic industry registered strong performance by most measures, particularly financial indicators.<sup>108</sup>

Production of counters and scanners grew from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>109</sup> Capacity utilization increased substantially from \*\*\* percent to \*\*\* percent from 1997 to 1999, reflecting the increase in production.<sup>110</sup> Employment of production workers did decrease but only by \*\*\* over the period of investigation, from \*\*\* in 1997 to \*\*\* in interim 2000.<sup>111</sup> Hourly

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<sup>102</sup> CR & PR Table C-4.

<sup>103</sup> CR & PR Table C-5.

<sup>104</sup> CR & PR Tables V-8 - V-9.

<sup>105</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885.).

<sup>106</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

<sup>107</sup> The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce stated that the estimated dumping margins were between 0.78 and 95.29 percent. 64 Fed. Reg. 66892, 66894 (Nov. 30, 1999).

<sup>108</sup> Given the short duration of the interim period (three months), we put limited weight on the interim period data, and focus on the full year data.

<sup>109</sup> CR & PR Table C-6.

<sup>110</sup> CR & PR Table C-6. Capacity utilization was \*\*\* percent in interim 2000, compared to \*\*\* in interim 1999.

<sup>111</sup> CR & PR Table C-6.

wages rose throughout the period of investigation; total wages rose from 1997 to 1999.<sup>112</sup> There were no major changes to productivity. The volume of the domestic industry's U.S. shipments of counters and scanners increased from \*\*\* units in 1997 to \*\*\* units in 1999, but were down from \*\*\* units in interim 1999 compared to \*\*\* units in interim 2000.<sup>113</sup> The value of U.S. shipments also increased, from \$\*\*\* million in 1997 to \$\*\*\* million in 1999, but were down from \$\*\*\* million in interim 1999 to \$\*\*\* million in interim 2000.<sup>114</sup> The domestic industry's market share rose from \*\*\* percent in 1997 to \*\*\* percent in 1999.<sup>115</sup>

The industry also registered strong financial performance. The industry's operating income margin, as a ratio of net sales, increased from \*\*\* percent in 1997 to \*\*\* percent in 1999. First quarter 2000 data suggest continued improvement in the health of the industry, with the operating margin reaching \*\*\* percent.<sup>116</sup>

Petitioner alleged that subject imports were impeding the domestic industry from making necessary capital and research and development ("R&D") expenditures in an industry that requires substantial investment in R&D in order to remain competitive. The data do not bear this out. Capital and R&D expenditures increased significantly over the period of investigation at the same time that subject imports were increasing. Indeed, capital and R&D expenditures were at their highest levels when subject imports volumes were at theirs. Capital expenditures grew almost \*\*\*, rising from \$\*\*\* in 1997 to \$\*\*\* in 1999, and were higher in interim 2000 at \$\*\*\* than in interim 1999 when they were \$\*\*\*. R&D expenses also increased, rising from \$\*\*\* in 1997 to \$\*\*\* in 1999; likewise they were \$\*\*\* in interim 2000, compared to \$\*\*\* in interim 1999.<sup>117</sup> Capital expenditures and R&D as a share of combined total net sales rose from \*\*\* percent in 1997 to \*\*\* percent in 1999.<sup>118</sup>

Thus, most performance measures indicate that the domestic industry is doing well. The industry, which is concentrated in the production of higher-valued machines, also was successful in raising its prices over the period of investigation. As the increase in net sales values outpaced the increase in unit costs, the industry's financial performance, which was strong at the beginning of the period of investigation, improved.<sup>119</sup>

Therefore, based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured by reason of imports of

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<sup>112</sup> CR & PR Table C-6.

<sup>113</sup> CR & PR Table C-6.

<sup>114</sup> CR & PR Table C-6.

<sup>115</sup> CR & PR Table C-6. Market share in interim 2000 was \*\*\* percent, compared to \*\*\* percent in interim 1999.

<sup>116</sup> CR & PR Table C-6. Operating income losses on counters predate the increased volume of subject imports; these losses fell in magnitude and as a percentage of net sales from 1997 to 1999, as subject imports increased. CR & PR Table C-4. Also, we note that if the domestic industry were to include De La Rue U.S., operating income margins would still reflect an increase in profitability over the period of investigation, from \*\*\* percent in 1997 to \*\*\* percent in 1999. CR & PR Table C-3.

<sup>117</sup> CR & PR at Table VI-5. We note that the interim 2000 figure, when annualized, is similar to the full year 1999 figure.

<sup>118</sup> Petitioner argued that, to remain competitive, it must increase its expenditures on R&D to 20 percent of its sales revenue. However, petitioner provided no proof that this threshold is necessary to remain competitive in this particular industry.

<sup>119</sup> The interim data show that this profitability has continued. CR & PR at Table C-6.

desktop note counters and scanners from China, Korea, and the United Kingdom that are allegedly sold in the United States at less than fair value.

**V. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**

**A. Cumulation for Purposes of Analyzing the Threat of Material Injury**

Cumulation for threat analysis is treated in Section 771(7)(H) of the Act.<sup>120</sup> This provision leaves to the Commission's discretion the cumulation of imports in analyzing threat of material injury. De La Rue U.K. has announced plans to shift scanner production from the United Kingdom to the United States in September 2000. As a result, there will likely be no subject imports of scanners in the imminent future because neither China nor Korea export scanners to the United States.<sup>121</sup> Thus, subject imports will consist solely of counters in the imminent future. Therefore, based on an evaluation of the relevant criteria as well as our analysis supporting cumulation in the context of assessing present material injury, we exercise our discretion to cumulate imports from China, Korea, and the United Kingdom for purposes of assessing whether there is a reasonable indication of threat of material injury.

**B. Statutory Factors**

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."<sup>122</sup> The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."<sup>123</sup> In making our determination, we have considered all factors that are relevant to this investigation.<sup>124</sup> Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain desktop note counters and desktop note scanners from China, Korea and the United Kingdom that are allegedly sold in the United States at less than fair value.

As an initial matter, we reiterate our observation that the domestic industry is currently prospering in virtually every respect. In fact, the industry's operating performance improved significantly over the period of investigation.

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<sup>120</sup> 19 U.S.C. § 1677(7)(H).

<sup>121</sup> CR at IV-5; PR at IV-4.

<sup>122</sup> 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

<sup>123</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

<sup>124</sup> 19 U.S.C. § 1677(7)(F)(I). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(I)(I) and (VII).

As noted above, subject imports increased rapidly and significantly between 1997 and 1999. We found that these increases were significant but, in light of conditions of competition and absence of a price effect, they did not make a material contribution to any injury to the domestic industry. Taking into account (a) the cessation of subject scanner imports from the United Kingdom after September 2000; (b) the lack of competition among different product types; (c) the healthy state of the domestic industry; and (d) the substantial presence of imports from Japan in the market, we find that any future increase in the volume of subject counters and scanners is unlikely to have a significant adverse effect on the domestic industry.<sup>125</sup>

Chinese and U.K producers of subject merchandise projected no increase in capacity or excess production capacity that would indicate the likelihood of substantially increased imports of subject merchandise into the United States.<sup>126</sup> The Korean industry did project increased production capacity in 2000 and 2001.<sup>127</sup> However, the U.S. market for the three subject countries is less important than their home markets or other export markets.<sup>128</sup> Thus, while there may be some possibility of increases in subject import volume, we do not find it likely that any such increase would be substantial.

We find that there is unlikely to be a significant degree of product shifting in China, Korea, and the United Kingdom. The record contains no indication that the equipment currently used to make money handling machines other than subject counters and scanners in China, Korea, and the United Kingdom can be used to produce any other product.

We note that U.S. importers' inventories of the subject imports increased at the end of the investigation period. However, in general, the ratios of inventories to both shipments and to imports remained at approximately their historic levels.<sup>129</sup> The foreign producers' inventories as a ratio to production and shipments were low at the end of the period of investigation.<sup>130</sup>

We do not find that imports of the subject merchandise are likely to enter the U.S. market at prices that are likely to depress or suppress domestic prices to a significant degree. As noted above, despite underselling by domestic products during the investigation period, subject imports neither suppressed nor depressed U.S. prices to a significant degree. We find no indication that competitive conditions will change to such a degree that subject imports in the imminent future would have such an effect. Moreover, both capital expenditures and research and development expenditures increased markedly over the investigation period, indicating that imports are unlikely to have any negative effect on development and production efforts of the domestic industry.<sup>131</sup> Finally, the record in these investigations does not indicate any demonstrable adverse trends suggesting that subject imports will imminently materially injure the domestic industry.

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<sup>125</sup> While petitioner alleged that Chinese and Korean manufacturers will begin shipping scanners to the U.S. market in the near future, there is no tangible record evidence that Chinese and Korean manufacturers will imminently produce machines capable of scanning U.S. currency denominations, nor any evidence that such scanners will imminently enter the U.S. market.

<sup>126</sup> CR & PR Tables VII-1 - VII-2, VII-5 - VII-6.

<sup>127</sup> CR & PR Table VII-3.

<sup>128</sup> CR & PR Tables VII-1 - VII-6.

<sup>129</sup> CR & PR Tables VII-7 - VII-8.

<sup>130</sup> CR & PR Tables VII-1 - VII-6; compare with CR & PR Table C-6.

<sup>131</sup> CR & PR at Table VI-5.

Based on these factors, we determine that the domestic industry producing desktop note counters and desktop note scanners is not threatened with material injury by reason of subject imports from China, Korea, and the United Kingdom.

### **CONCLUSION**

For the reasons stated above, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain desktop note counters and desktop note scanners from China, Korea, and the United Kingdom that are allegedly sold in the United States at less than fair value.

## CONCURRING VIEWS OF COMMISSIONER THELMA J. ASKEY

Based on the record in these investigations, I find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of desktop note counters and desktop note scanners from China, Korea and the United Kingdom that are allegedly sold in the United States at less than fair value (“LTFV”).<sup>132</sup>

I write separately because I find that appropriate circumstance do not exist to exclude the domestic producer De La Rue, Inc. from the domestic industry. However, I concur with my colleagues’ discussion of the legal standard for our preliminary determination and their findings with respect to the domestic like product and cumulation. Accordingly, I join the views of the Commission with respect to these issues. I set forth the details of my domestic industry/related party, material injury and threat of material injury analysis below.

### I. THE DOMESTIC INDUSTRY AND RELATED PARTIES

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . . .”<sup>133</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>134</sup> Because I find that there is one domestic like product in this proceeding, consisting of desktop note counters and scanners, I also find that the domestic industry consists of the domestic producers of desktop note counters and scanners, which includes Cummins-Allison Corporation (“C-A”) De La Rue, Inc. (“De La Rue US”), and Gisika and Deveron (“G&D”).<sup>135</sup>

Under the statute, the Commission may exclude from the domestic industry, if appropriate circumstances exist, any producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>136</sup> However, exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.<sup>137</sup> In this case,

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<sup>132</sup> There is no issue these investigations regarding whether there is a reasonable indication that a domestic industry is materially retarded by reason of subject imports.

<sup>133</sup> 19 U.S.C. § 1677(4)(A).

<sup>134</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>135</sup> A third producer, G&D, the successor to Technitrol, manufactured counters and scanners during the period of investigation, accounting for \*\*\* percent of total production in 1999. G&D ceased production of counters in 1998 but continued to produce scanners until December 1999, when it ceased production as a result of a patent infringement suit against it by Cummins-Allison. CR at III-2, PR at III-2.

<sup>136</sup> 19 U.S.C. § 1677(4)(B).

<sup>137</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, *e.g.*, Torrington Co. v. United

(continued...)

De La Rue US is a \*\*\* of De La Rue, PLC (“De La Rue U.K.”), a British producer and exporter of the subject merchandise. De La Rue US is therefore a related party. Accordingly, I have considered whether appropriate circumstances exist to exclude De La Rue US from the industry.

I find that appropriate circumstances do not exist to exclude De La Rue US from the industry. First, De La Rue US is one of the two significant domestic producers of desktop note counters and scanners and accounted for nearly \*\*\* percent of domestic production in 1999.<sup>138</sup> Although De La Rue US imported an increasing number of desktop note counters and scanners from the United Kingdom and Korea during the period of investigation and produced a decreasing number of counters and scanners at the same time, De La Rue US continues to produce a substantially larger volume of note counters and scanners than it imports from the subject countries.<sup>139</sup> Moreover, in June 2000, De La Rue US publicly announced that it would resume scanner production in the United States at its Watertown, Wisconsin production facility. Thus, the record indicates that De La Rue US has accounted for a significant percentage of domestic production and will account for substantially larger volumes of domestic production of scanners in the near future. Accordingly, I find that De La Rue US’s primary interest lies in domestic production and not in importation of the subject merchandise.

Secondly, De La Rue US reported that it began importing subject merchandise from its British parent after relocating its scanner production facilities to the United Kingdom in September 1998.<sup>140</sup> De La Rue US stated that it made this decision to consolidate its production operations and serve international markets more efficiently.<sup>141</sup> De La Rue US has subsequently announced that it will move these production operations back to the United States, primarily because of disappointing sales from the United Kingdom location.<sup>142</sup> Given this, it is clear that De La Rue US began importing scanners from its parent in 1998 and 1999 not to benefit from LTFV sales, but rather as a result of its decision to more efficiently rationalize its international production operations. Moreover, given that it has decided to resume its scanner production in the United States, it is clear that De La Rue US itself has concluded that it has not, and will not, benefit significantly from continued importation of subject merchandise from the United Kingdom.

Finally, the record indicates that inclusion of De La Rue US in the industry will not unfairly skew the industry’s financial results. On the contrary, because the record indicates that

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<sup>137</sup> (...continued)

States, 790 F. Supp. 1161, 1168 (CIT 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

<sup>138</sup> Moreover, De La Rue US accounted for \*\*\* percent of domestic production of counters (excluding scanners). CR at III-1; PR at III-1.

<sup>139</sup> De La Rue domestically manufactured \*\*\* counters and scanner in 1997, \*\*\* counters and scanners in 1998, and \*\*\* counters and scanners in 1999. It imported \*\*\* counters and scanners from the United Kingdom and Korea in 1997, \*\*\* in 1998, and \*\*\* in 1999. De La Rue Producer and Importer Questionnaire Responses.

<sup>140</sup> CR at III-2 & IV-5, PR at III-2 & IV-4.

<sup>141</sup> CR at III-2 & IV-5, PR at III-2 & IV-4.

<sup>142</sup> CR at III-2, PR at III-2.

De La Rue US has \*\*\*,<sup>143</sup> I find that including De La Rue US in the domestic industry will not make the industry appear to be healthier than it actually is.

On the whole, therefore, I find that appropriate circumstances do not exist to exclude De La Rue US from the industry.

## **II. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS FROM CHINA, KOREA, AND THE UNITED KINGDOM**

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>144</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>145</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>146</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, I consider all relevant economic factors that bear on the state of the industry in the United States.<sup>147</sup> No single factor is dispositive, and all relevant factors are to be considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>148</sup>

For the reasons discussed below, I determine that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports of desktop note counters and desktop note scanners from China, Korea, and the United Kingdom that are allegedly sold in the United States at less than fair value.

### **A. Conditions of Competition**

As directed by the statute, I have taken the following conditions of competition into account when performing my analysis in this proceeding:

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<sup>143</sup> See CR and PR at Tables VI-2 & VI-3.

<sup>144</sup> 19 U.S.C. § 1671b(a) and 1673b(a).

<sup>145</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>146</sup> 19 U.S.C. § 1677(7)(A).

<sup>147</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>148</sup> 19 U.S.C. § 1677(7)(C)(iii).



First, desktop note counters and scanners are used to count documents, primarily currency, and to provide an operator with the number of documents or notes counted.<sup>149</sup> Desktop note counters and scanners both count currency and both may have the ability to assess whether currency is counterfeit. However, scanners also have the ability to keep track of the denominations of the currency counted as well as the total value of a particular stack of currency.<sup>150</sup> Accordingly, desktop note counters and scanners are used in money processing applications across a range of industries, with end uses being concentrated in the banking and large retail store areas.<sup>151</sup> Nonetheless, desktop note counters and scanners are also sold to smaller end users, such as small retail establishments, who need only less expensive, less durable machines.<sup>152</sup>

Second, demand for desktop note counters and scanners increased considerably during the period of investigation, growing by more than \*\*\* percent between 1997 and 1999 and then growing by an additional \*\*\* percent between interim 1999 and 2000.<sup>153</sup> Although the record indicates that there have been increases in demand for counters and scanners alike, growth in the scanners segment of the market has considerably outpaced growth in the counters segment of the market. More particularly, apparent consumption of counters increased by \*\*\* percent between 1997 and 1999,<sup>154</sup> while apparent consumption of scanners increased by \*\*\* percent between 1997 and 1999.<sup>155</sup>

Third, the domestic industry's aggregate production capacity and production levels decreased significantly during the period of investigation. The industry's overall reported capacity declined by \*\*\* percent during the period of investigation, falling from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>156</sup> Similarly, the industry's production levels fell by \*\*\* percent during the same period while its capacity utilization rates declined by \*\*\* percent.<sup>157</sup> Nonetheless, the record clearly indicates that these aggregate production and capacity declines are attributable exclusively to changes made by De La Rue US in its production operations and have nothing to do with LTFV pricing or unfair competition from the subject imports. On the contrary, the record clearly indicates that the changes were made by De La Rue US and its British parent in an attempt to \*\*\*.<sup>158</sup>

In this regard, the record clearly indicates that the sole reason that the industry's production levels declined was that aggregate domestic production of desktop note counters declined by \*\*\* percent during the period from 1997 to 1999. The record also indicates, moreover, that De La Rue US was responsible for this entire decline in the industry's production

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<sup>149</sup> CR at I-2, PR at I-2.

<sup>150</sup> CR at I-2-3, PR at I-2-3.

<sup>151</sup> CR at II-5, PR at II-3.

<sup>152</sup> CR at II-5, PR at II-4.

<sup>153</sup> CR and PR at Table C-3.

<sup>154</sup> CR & PR at Tables IV-3 - IV-4. Apparent consumption of counters was \*\*\* percent higher in the first quarter of 2000 compared to the first quarter of 1999. Id.

<sup>155</sup> CR & PR Tables IV-4.

<sup>156</sup> CR & PR at Table C-3. In this regard, I note that capacity figures may be somewhat unreliable because of the manner in which counters and scanners are produced. CR at III-4, PR at III-2.

<sup>157</sup> CR and PR at C-3.

<sup>158</sup> CR and PR at III-1-III-5, PR at III-1-III-2.

of counters from 1997 to 1999, as De La Rue's production of counters dropped by nearly \*\*\* percent from 1997 to 1999.<sup>159</sup> Petitioner's production of desktop note counters, on the other hand, increased by more than \*\*\* percent between 1997 and 1999, enabling it to increase its share of the counter market from \*\*\* percent in 1997 to \*\*\* percent in 1999.<sup>160</sup> Similarly, although De La Rue's production of scanners declined during the period of investigation, petitioner's production and shipments of desktop note scanners increased substantially during the period of investigation.<sup>161</sup> I note that De La Rue US opposes the antidumping petition and has indicated that it is not being materially injured by the subject imports.<sup>162</sup>

Fourth, there is only a limited level of substitutability between the subject imports of counters and scanners and the domestic merchandise. In this regard, I find that the overall level of substitutability between the subject imports from China and Korea and the domestic merchandise is significantly limited by the fact that the subject producers in these countries exported no desktop note scanners to the United States during the period of investigation.<sup>163</sup> Moreover, although the record indicates that there is some level at which the subject imports from all three countries are reasonably interchangeable with the domestic merchandise, the record also establishes that the level of substitutability is limited by differences in quality, product range, service and technical support.<sup>164</sup> As a result of these differences, the large majority of responding importers reported that non-price differences were frequently a factor in their sales of subject counters and scanners,<sup>165</sup> which indicates that the market for counters and scanners is not particularly price sensitive.

Finally, non-subject imports of counters and scanners, primarily from Japan, occupy a substantial portion of the U.S. market.<sup>166</sup> In 1999, imports of desktop note counters and scanners from Japan accounted for \*\*\* percent of total imports in 1999<sup>167</sup> and \*\*\* of the total U.S. market. The record indicates that Japanese imports compete directly in the higher-end scanner and counter market, and are frequently interchangeable with domestically produced machines.<sup>168</sup>

## **B. Volume**

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."<sup>169</sup>

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<sup>159</sup> CR at Table C-1 & III-3, PR at Table C-1 & III-2.

<sup>160</sup> CR at III-3, PR at III-3.

<sup>161</sup> CR at III-3-III-5, PR at III-2.

<sup>162</sup> De La Rue's Post Conference Brief at 2.

<sup>163</sup> CR and PR at Table IV-4.

<sup>164</sup> CR at II-9, PR at II-5.

<sup>165</sup> CR at II-9, PR at II-5.

<sup>166</sup> \*\*\*. CR at IV-1 fn 1; PR at IV-1, n.1.

<sup>167</sup> CR & PR at Table C-1 - C-2.

<sup>168</sup> CR at II-10; PR at II-7.

<sup>169</sup> 19 U.S.C. § 1677(7)(C)(i).

In light of the conditions of competition I discussed above, I find that the volume of the subject imports is not significant. In doing so, I recognize that the volume of the subject imports increased substantially on an absolute level and in market share terms during the period of investigation. In absolute terms, for example, the volume of the subject imports grew by nearly \*\*\* percent during the period of investigation, increasing from \*\*\* units in 1997 \*\*\* units in 1998 to \*\*\* units in 1999.<sup>170</sup> The volume of the subject imports continued to grow in 2000, increasing to \*\*\* units in interim 2000 from \*\*\* units in interim 1999.<sup>171</sup> In terms of market share, the volume of the subject imports also grew substantially during of investigation, increasing from \*\*\* percent in 1997 to \*\*\* percent in 1999, and then to \*\*\* percent in interim 2000.<sup>172</sup>

Nonetheless, while these quantity and market share increases might appear substantial in the abstract, the record of these investigations clearly establishes that they are not particularly significant given conditions of competition in this market. In this regard, I note that petitioner has been able to increase its production and shipment levels for both desktop note counters and scanners during the period from 1997 to 1999, despite the substantial increases in the volume of the subject imports.<sup>173</sup> Similarly, petitioner has been able to increase its market share during the period of investigation.<sup>174</sup> Moreover, while it is true that De La Rue US's production, shipment levels and market shares have declined considerably during the period of investigation, De La Rue opposes the petition and itself reports that it has not been affected by the increased volumes. Given these two considerations, the record is clear that there is no reasonable indication that increases in subject import volumes have had any adverse impact on the production, shipment or sales levels of the domestic industry.

### **C. Price Effects of the Subject Imports**

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>175</sup>

I find that the record of this investigation clearly and convincingly establishes that the cumulated subject imports have had no impact on domestic prices during the period of investigation. In this regard, I note that the price comparison data in these investigations indicate that subject imports of desktop note counters undersold the domestic merchandise in nearly two-

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<sup>170</sup> CR and PR at Table C-3.

<sup>171</sup> CR & PR at Table C-3.

<sup>172</sup> CR & PR at Table C-3.

<sup>173</sup> CR and PR at Table C-4 & C-5.

<sup>174</sup> Petitioner's market share increased from \*\*\* percent in 1997 to \*\*\* percent in 1999. CR and PR at Table C-6.

<sup>175</sup> 19 U.S.C. § 1677(7)(C)(ii).

thirds of possible price comparisons, often by considerable margins, during the period of investigation. The record also indicates that the subject imports of desktop note scanners generally oversold the domestically produced scanners in most quarterly price comparisons.<sup>176</sup> Nonetheless, when I review the price comparison data, I find no evidence that the underselling or overselling by the subject imports has had a depressing or suppressing effect on domestic prices.

In this regard, the Commission's price comparison data for two desktop note counter products indicates that, despite reasonably consistent and substantial underselling by the subject imports, the domestic prices of these products generally remained stable or increased slightly throughout the period of investigation.<sup>177</sup> For example, petitioner's prices for product 1, which sell at substantially higher volumes than product 2, remained stable from the third quarter of 1997 through the end of the POI.<sup>178</sup> Similarly, De La Rue's prices for product 1 remained relatively stable throughout the POI, and even evidenced a somewhat higher price level in 1999 than 1997. Moreover, petitioner's prices for product 2 remained stable throughout most of the POI before declining a modest \*\*\* percent in the last 3 quarters of the POI.<sup>179</sup> De La Rue's prices for product 2, on the other hand, actually increased somewhat during the POI. This record data clearly indicates that the subject counter imports have had little or no impact on domestic counter prices.

Similarly, the price comparison data establish that the subject scanner imports have had no significant price effect on the prices of domestic scanners during the period of investigation. First, the record indicates, as I stated above, that the subject scanner imports from the United Kingdom oversold the domestic merchandise by substantial amounts during the period of investigation.<sup>180</sup> Moreover, the domestic industry's prices for the two scanner comparison products actually increased or remained stable during the period of investigation. For example, petitioner's price for product 3 increased from \$\*\*\* per unit in the first quarter of 1997 to \$\*\*\* in the first quarter of 2000. Petitioner's price product 4 remained relatively stable throughout the POI, beginning the first quarter of 1997 at \$\*\*\* per unit and ending the first quarter of 2000 at \$\*\*\*.<sup>181</sup> Similarly, De La Rue's price for comparison product 3 remained stable during the period while its prices for comparison product 4 increased somewhat during the period.<sup>182</sup> In light of the overselling by subject imports with respect to these products and their minimal impact on domestic prices, I find that the record also establishes that the imports have not had a price-depressing or suppressing effect on domestic scanner prices.

My conclusion in this regard is supported by the fact that the industry's average unit values for its domestic shipments actually increased by nearly \*\*\* percent during the period from 1997 to 1999, at the same time that its cost of goods sold as a percentage of net sales was decreasing.<sup>183</sup> More specifically, the domestic industry's average unit values for its domestic shipments increased from \$\*\*\* in 1997 to \$\*\*\* in 1999, while its average unit values for all of its

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<sup>176</sup> See CR & PR at Tables V1 - V-9.

<sup>177</sup> CR and PR at Tables V-1-V-7 & Figures V-2-V-9.

<sup>178</sup> CR & PR at Table V-1.

<sup>179</sup> CR & PR at Table V-5.

<sup>180</sup> CR and PR at Table V-8-9 & Figure V-10-13.

<sup>181</sup> CR & PR at Table V-9.

<sup>182</sup> CR and PR at Tables V-8-9 & Figures V-10-13.

<sup>183</sup> CR and PR at Table C-3.

sales increased from \$\*\*\* in 1997 to \$\*\*\* in 1999.<sup>184</sup> At the same time that the industry's unit values were increasing, its ratio of costs of goods sold to net sales of counters declined from \*\*\* to \*\*\* percent during the period of investigation.<sup>185</sup> As a result of these trends, the industry has enjoyed increasing profitability levels during the period of investigation, with its operating income as a percentage of sales revenues increasing from \*\*\* percent in 1997 to \*\*\* percent in 1998 and then to \*\*\* percent in 1999.<sup>186</sup> Moreover, the industry's operating income level in interim 2000 is above its overall full year level for 1999 as well. Given the foregoing, the record clearly establishes that the subject imports are not having a depressing or suppressing effect on domestic prices or profitability at all.

Accordingly, I find that the subject imports have not adversely affected domestic prices to a significant degree.

#### **D. Impact**

In examining the impact of the subject imports on the domestic industry, I considered all relevant economic factors that bear on the state of the industry in the United States.<sup>187</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>188 189</sup>

I find that the record of these investigations clearly and convincingly establishes that the subject imports have not had a significant adverse impact on the domestic industry. Although subject imports increased during the period of investigation and generally undersold domestic merchandise, the domestic industry as a whole registered strong and improving financial performance throughout the period of investigation. First, and perhaps most importantly, the industry's profitability levels have been high and increasing over the period of investigation, with its operating income as a percentage of sales revenues increasing from \*\*\* percent in 1997 to \*\*\* percent in 1998 and then to \*\*\* percent in 1999.<sup>190</sup> The industry's operating income levels have

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<sup>184</sup> CR and PR at Table C-3.

<sup>185</sup> CR & PR at Table VI-2.

<sup>186</sup> CR and PR at Table C-3.

<sup>187</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." *Id.* at 885.).

<sup>188</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

<sup>189</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce stated that the estimated dumping margins were between 0.78 and 95.29 percent. 64 Fed. Reg. 66892, 66894 (Nov. 30, 1999).

<sup>190</sup> CR and PR at Table C-3.

increased during interim 2000 over its full year 1999 levels as well.<sup>191</sup> Moreover, although (on an absolute level) the industry's gross profits and operating income levels have declined during the period, \*\*\* of this decline is attributable to De La Rue's decision to \*\*\*.<sup>192</sup> In this regard, I note that, on an absolute level, petitioner's gross profits levels increased by \*\*\* percent during the period from 1997 to 1999 and that its operating income levels increased by \*\*\* percent over the same period.<sup>193</sup> Clearly, this is not a picture of a producer that is suffering significantly by reason of the subject imports.

Secondly, I recognize that the record indicates that the industry's overall production, shipments and sales levels have fallen during the period of investigation. In particular, the industry's production of counters and scanners fell from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>194</sup> Similarly, the industry's shipments of counters and scanners fell irregularly from \*\*\* units in 1997 to \*\*\* units in 1999, while its capacity utilization decreased from \*\*\* percent to \*\*\* percent from 1997 to 1999.<sup>195</sup> However, as I also discussed above, these volume declines are directly and solely attributable to the decision of De La Rue to \*\*\*, while petitioner's volume levels have remained unaffected by the volume increases of the subject imports. More specifically, petitioner's production volumes actually increased during the period of investigation, growing from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>196</sup> Similarly, the petitioner realized its highest capacity utilization levels in 1999, the year in which subject imports reached their highest level and was able to increase its shipments of counters and scanners considerably during the period, from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>197</sup>

Finally, petitioner contends that the subject imports were impeding the domestic industry from making necessary capital and R&D expenditures in an industry that requires substantial investment in R&D in order to remain competitive. I find that the record does not support this contention. The industry's capital and R&D expenditures remained essentially stable throughout the period of investigation, despite the increase in import volumes. Indeed, the industry's capital and R&D expenditures were at their highest levels when subject imports volumes were at theirs.<sup>198</sup> As a percentage of sales revenue, capital expenditures and R&D were up from \*\*\* percent in 1997 to \*\*\* percent in 1999. In fact, petitioner reported that its capital expenditures grew almost threefold, rising from \*\*\* in 1997 to \$\*\*\* million in 1999 and that its R&D expenses increased from \$\*\*\* million in 1997 to \$\*\*\* million in 1999.

Thus, most performance measures indicate that the industry is performing well.<sup>199</sup> The industry, which is concentrated in the production of higher-valued machines, also was successful in raising its prices over the period of investigation. As the increase in net sales values outpaced

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<sup>191</sup> CR and PR at Table C-3.

<sup>192</sup> In the aggregate, the domestic industry's gross profits fell from \$[[30.1]] million in 1997 to \$[[25.8]] million in 1998 and \$[[22.3]] million in 1999. Further, the domestic industry's operating income likewise fell from \$[[7.1]] million in 1997 to \$[[7.0]] million in 1998 and \$[[6.9]] million in 1999.

<sup>193</sup> CR and PR at Table C-5.

<sup>194</sup> CR & PR at Table C-3.

<sup>195</sup> CR & PR at Table C-3.

<sup>196</sup> CR & PR at Table C-6.

<sup>197</sup> CR & PR at Table C-6.

<sup>198</sup> CR & PR at Table VI-5.

<sup>199</sup> The interim data suggest this profitability has continued. CR & PR at Table VI-2.

the increase in unit costs, the industry's financial performance, which was strong at the beginning of the period of investigation, improved. Accordingly, I find that there is no reasonable indication that an industry in the United States is materially injured by reason of imports of desktop note counters and scanners from China, Korea and the United Kingdom that are allegedly sold in the United States at less than fair value.

## **VI. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**

### **A. Cumulation for Purposes of Analyzing the Threat of Material Injury**

Under section 771(7)(H) of the Act,<sup>200</sup> the Commission has the discretion to cumulate subject imports if the imports compete with one another and the domestic industry. As is discussed in the Commission's views (which I join), the record indicates that there is a reasonable, although limited, degree of competition among the subject imports and the domestic industry. Accordingly, I exercise my discretion to cumulate imports from China, Korea, and the U.K. for purposes of assessing whether there is a reasonable indication of threat of material injury.

### **B. Statutory Factors**

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."<sup>201</sup> The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."<sup>202</sup> In making my determination, I have considered all factors that are relevant to this investigation.<sup>203</sup> Based on an evaluation of the relevant statutory factors, I find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of desktop note counters and desktop note scanners from China, Korea, and the United Kingdom that are allegedly sold in the United States at less than fair value.

As an initial matter, I find that the domestic industry is not vulnerable to any possible impact from the subject imports during the imminent future. As I discussed above, the industry has been very profitable during the period of investigation and its profits have increased throughout the period. Moreover, although the industry's production, shipment and market share levels have declined during the period, these declines are attributable exclusively to changes in the operations of De La Rue US, who insists that these declines are not the result of subject

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<sup>200</sup> 19 U.S.C. § 1677(7)(H).

<sup>201</sup> 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

<sup>202</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

<sup>203</sup> 19 U.S.C. § 1677(7)(F)(I). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(I)(I) and (VII).

import competition. In this regard, the record clearly establishes that the petitioner, the only other current domestic producer of counters and scanners, has seen its production, shipments and sales volume as well as market share increase throughout the period.

First, I do not find that the existing unused production capacity or imminent increases in production capacity in the subject countries indicate that there is a likelihood of substantially increased imports from these countries into the United States in the imminent future. In this regard, the record indicates that there is little likelihood that producers in China, Korea, or the United Kingdom will use their production facilities to increase their exports of scanners to the United States during the imminent future. The Korean producers report that they have no current capacity to produce scanners and will add only a minimal amount of capacity by the end of 2001.<sup>204</sup> The Chinese producers report that they have more substantial volumes of scanner capacity than the Korean producers but have not used any of this capacity to ship scanner products to the United States.<sup>205</sup> Finally, the British producer also had available scanner capacity during the period of investigation and used this capacity to increase their scanner exports to the United States in 1998 and 1999.<sup>206</sup> However, as I have previously discussed, De La Rue has announced that it will move scanner production operations back to the United States in September 2000 and projects that it will export no more scanners to the United States from the United Kingdom. Given the foregoing, I find that it is unlikely that the subject producers will use any of their available capacity to ship additional scanners to the United States. On the contrary, I find that the resumption of scanner production operations by De La Rue in the United States is likely to result in a significant decrease in scanner imports in the imminent future.

With respect to counters, I also find that the subject producers are unlikely to use their available capacity or expected capacity increases to significantly increase their counter exports to the United States. In this regard, the record indicates that the producers of counters in the three subject countries have been operating at reasonably high capacity utilization rates during the period of investigation, and that they expect to operate at higher capacity utilization rates in 2000 and 2001, with little or no increase in their exports to the United States.<sup>207</sup> Although the Chinese have been operating at somewhat lower capacity utilization rates than the Korean and British producers and although their utilization rates have declined during the period,<sup>208</sup> the Chinese producers' export levels to the United States have declined during the period,<sup>209</sup> which indicates that these producers are unlikely to ship additional counters to the United States in the future because of these capacity utilization declines. Moreover, the producers in all three subject countries ship the large bulk of their export production to third country markets, not the United States.<sup>210</sup> All of these considerations indicate that the subject producers are unlikely to significantly increase their U.S. export volumes above their current levels.

Second, although there has been a substantial increase in the volume and market share of the subject imports during the period of investigation, I do not find that this increase indicates that there is a substantial likelihood of increased imports. As I discussed above, the increase in the

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<sup>204</sup> CR and PR at Table VII-4.

<sup>205</sup> CR and PR at Table VII-2.

<sup>206</sup> CR and PR at Table VII-6.

<sup>207</sup> CR and PR at Tables VII-1, VII-3, & VII-5.

<sup>208</sup> CR and PR at Tables VII-1, VII-3, & VII-5.

<sup>209</sup> CR and PR at Table VII-1.

<sup>210</sup> CR and PR at Tables VII-1, VII-3, & VII-5.



volume of the subject imports during the period had little adverse effect on the domestic industry's volume levels. I do not find that conditions of competition will change so significantly in this market that imports will be likely to increase in a manner that will have a significant impact on the industry in the imminent future. Moreover, the record indicates that De La Rue has announced that it will shift scanner operations back to the United States in September 2000. Given this, I find it likely that De La Rue will shift a significant volume of scanner sales from its United Kingdom operations to its U.S. production facility, which will act to limit the volume of subject merchandise shipped by subject producers to the United States in the imminent future..

Third, I also find that it is unlikely that there will be a significant degree of product shifting in China, Korea or the United Kingdom. The record indicates that the equipment currently used to make subject counters and scanners in China, Korea and the United Kingdom is not used to produce any other product.

Fourth, I have considered the fact that U.S. importers' inventories of the subject imports increased at the end of the investigation period. However, I do not find that these inventory increases indicate a likelihood of substantial increases in future imports volumes, given that the ratio of inventories to both shipments and to imports have generally remained at their historical levels.<sup>211</sup>

Fifth, I do not find that imports of the subject merchandise are likely to enter the U.S. market at prices that are likely to depress or suppress domestic prices to a significant degree. As noted above, despite underselling by domestic products during the period of investigation, subject imports neither suppressed nor depressed U.S. prices to a significant degree. I find that the record contains little evidence indicating that competitive conditions in the market will change to the point that subject imports would have such an effect in the imminent future.

Moreover, both capital expenditures and research and development expenditures remained strong or increased over the investigation period, despite the increases in import volumes. I find that this suggests that imports are unlikely to have any negative effect on development and production efforts of the domestic industry.<sup>212</sup>

Based on these factors, I determine that significantly increasing volumes of subject imports are not imminent and that material injury will not occur in the absence of antidumping duty orders. Therefore, I find that the domestic industry producing desktop note counters and desktop note scanners is not threatened with material injury by reason of subject imports from China, Korea and the United Kingdom.

## **CONCLUSION**

For the reasons stated above, I determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of desktop note counters and desktop note scanners that are allegedly sold in the United States at less than fair value.

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<sup>211</sup> CR & PR at Table C-3.

<sup>212</sup> CR & PR at Table VI-5.

## SEPARATE AND DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

### *Desktop Note Counters and Scanners from China, Korea, and the United Kingdom* *Inv. Nos. 731-TA-855-887 (Preliminary)*

Based upon the limited record in this preliminary phase of these investigations, I find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of desktop note counters and scanners (“counters and scanners”) from China, Korea, and the United Kingdom, that are allegedly sold in the United States at less than fair value (“LTFV”). I also find that there is no reasonable indication that an industry in the United States is materially injured by reason of subject imports of desktop note counters and scanners from China, Korea, and the United Kingdom, that are allegedly sold in the United States at LTFV.

For purposes of discussion, I have joined all of my colleagues with respect to the definitions of the domestic like product and domestic industry, as well as the discussion of cumulation in the context of present material injury.

#### **I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS**

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>213</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>214</sup>

In this context, although the limited record in this preliminary phase of these investigations appears to support a finding that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports, based upon the limited record at this stage of the proceedings and the questions raised by that record, I am unable to affirmatively state that in the context of a threat of material injury analysis there is no likelihood that contrary evidence will arise in any final phase investigations.<sup>215</sup> Accordingly, I render affirmative threat determinations in these preliminary investigations.

Importantly, I find that there are several outcome determinative issues which, in my view, are not resolved at this stage of the proceedings, and are of particular relevance to my preliminary threat determinations. For example, while the limited record at this phase appears to indicate that there is one like product, including both counters and scanners, the issue appears to be a close call and the record does not foreclose a possibly different conclusion. In particular, I note that there is limited information regarding purchasers’ perceptions as to whether counters and scanners are one like product. In addition, the limited pricing data collected thus far indicate that scanners are sold at prices substantially higher than even high-

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<sup>213</sup> 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

<sup>214</sup> American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>215</sup> I also point out that, even recognizing the important questions raised by the record, I am satisfied that there is no likelihood that contrary evidence would arise in any final investigations with respect to my negative present material injury findings.

end counters, thus raising a question as to whether there is a clear dividing line between these products. I expect that a final phase investigation would provide the opportunity to more fully address these issues, in part through the collection of purchasers' perceptions as to whether or not counters and scanners are part of the same family of products. I note that a finding of two like products may affect the determinations by the Commission, whether preliminary or final, since there may be different determinations for each of the products if considered separately.

Other important issues which are best resolved pending the compilation of additional data are the impact on the domestic industry of imports of subject merchandise by domestic producer De La Rue U.S. and whether De La Rue U.S. should be excluded from the domestic industry as a related party. The potential impact of this exclusion, in my view, may affect the outcome of any final determinations since the exclusion significantly alters the data regarding domestic industry performance. Also, it is unknown at this early stage of the investigations what impact, if any, De La Rue U.S.'s imminent return to U.S. scanner production may have on the domestic industry's profitability, if the volume of subject imports continues to increase as appears evident.

In conclusion, I am satisfied that based upon the outcome determinative nature of these unresolved issues and the apparent limited factual record at this stage of the proceedings, final phase investigations will provide the Commission with the opportunity to hear first-hand from the parties and purchasers, resulting in the development a more complete factual record.

## **II. RELATED PARTIES**

As noted above, there is one related-party issue to consider in these investigations, i.e. whether De La Rue U.S. should be excluded from the domestic industry based upon its corporate relationship with a subject foreign producer and De La Rue U.S.'s substantial imports of subject merchandise.

De La Rue U.S. is a \*\*\* of De La Rue, PLC, a foreign producer and exporter of the subject merchandise from the United Kingdom, which directly or indirectly controls De La Rue U.S.<sup>216</sup> In addition, during the period of investigation ("POI"), De La Rue U.S. imported measurable volumes of subject imports from Korea and the United Kingdom.<sup>217</sup> The limited record therefore indicates that De La Rue U.S. is a related party.

However, while De La Rue U.S. did import subject counters and scanners during the POI, the limited record nonetheless indicates a clear possibility that De La Rue U.S.'s primary interests lie in domestic production. De La Rue U.S.'s domestic production of both counters and scanners totaled \*\*\* units in 1997, \*\*\* units in 1998, \*\*\* units in 1999, and \*\*\* units in interim 1999.<sup>218</sup> In contrast, its imports of subject merchandise totaled \*\*\* units in 1997, \*\*\* units in 1998, \*\*\* units in 1999, and \*\*\* units in interim 2000.<sup>219</sup> The limited record therefore indicates that although the volume of De La Rue U.S.'s subject imports increased steadily over the POI, coinciding with a related decrease in shipments of domestic production, domestic production accounted for a larger share of De La Rue U.S.'s shipments throughout the POI than did its subject imports.<sup>220</sup> In addition, the limited record indicates that in September 2000 De La Rue U.S. will resume scanner production in the United States and cease importing subject scanners from the United Kingdom.<sup>221</sup>

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<sup>216</sup> De La Rue Br. at 1. See, e.g., CR at III-2 and III-3 n.8.

<sup>217</sup> De La Rue U.S. Questionnaire Response.

<sup>218</sup> De La Rue U.S. Questionnaire Response.

<sup>219</sup> De La Rue U.S. Questionnaire Response.

<sup>220</sup> CR & PR at Table C-3; CR & PR at Table C-6.

<sup>221</sup> CR at III-2, PR at III-2.

Based upon the foregoing, I determine that appropriate circumstances do not exist to exclude De La Rue U.S. from the domestic industry as a related party in this preliminary phase. I have therefore included De La Rue U.S. in my analysis of injury to the domestic industry.

### III. NO REASONABLE INDICATION OF PRESENT MATERIAL INJURY

For the reasons discussed below, I determine that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from China, Korea, and the United Kingdom that are allegedly sold in the United States at less than fair value.

While both the volume of subject imports and their share of the U.S. market increased steadily over the POI, subject imports have not yet had a significant negative effect on prices for the domestic like product or resulted in a significant adverse impact on the domestic industry. There is therefore no reasonable indication that the domestic industry is materially injured by reason of subject imports and no likelihood exists that contrary evidence will arise in any final phase investigation.

#### A. VOLUME

Growth in apparent consumption of counters was modest from 1997 to 1999, \*\*\* percent, although it did jump in the first quarter of 2000 by \*\*\* percent as between the interim periods.<sup>222</sup> The market for scanners, however, saw a dramatic increase in apparent consumption over the POI, by \*\*\* percent from 1997 to 1999.<sup>223</sup> Combined, apparent consumption for counters and scanners increased by \*\*\* percent from 1997 to 1999, and by \*\*\* as between interim 1999 and interim 2000.<sup>224</sup>

In 1999, imports of non-subject Japanese counters accounted for \*\*\* percent of total imports of counters.<sup>225</sup> That same year, Japanese scanners accounted for \*\*\* percent of total imports of scanners. Combined, Japanese counters and scanners accounted for \*\*\* percent of total imports in 1999.<sup>226</sup>

The volume of subject imports increased steadily over the POI. On a cumulated basis, subject imports increased from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>227</sup> As between the interim periods, subject imports increased from \*\*\* units in interim 1999 to \*\*\* units in interim 2000.<sup>228</sup> In contrast, domestic producers' total U.S. shipments decreased from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>229</sup> As between the interim periods, domestic shipments declined from \*\*\* units in interim 1999 to \*\*\* units in interim 2000.<sup>230</sup>

Subject imports' U.S. market share, on a quantity basis, also increased significantly over the POI, from \*\*\* percent in 1997 to \*\*\* percent in 1999.<sup>231</sup> As between the interim periods, subject imports' U.S. market share increased from \*\*\* percent in interim 1999 to \*\*\* percent in interim 2000.<sup>232</sup> In contrast, domestic producers' share of U.S. apparent consumption, on a quantity basis, declined from \*\*\* percent in

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<sup>222</sup> CR & PR at Table C-1.

<sup>223</sup> CR & PR at Table C-2.

<sup>224</sup> CR & PR at Table C-3.

<sup>225</sup> CR & PR at Table C-1.

<sup>226</sup> CR & PR at Table C-3.

<sup>227</sup> CR & PR at Table C-3.

<sup>228</sup> CR & PR at Table C-3.

<sup>229</sup> CR & PR at Table C-3.

<sup>230</sup> CR & PR at Table C-3.

<sup>231</sup> CR & PR at Table C-3.

<sup>232</sup> CR & PR at Table C-3.

1997 to \*\*\* percent in 1999.<sup>233</sup> As between the interim periods, domestic producers' market share declined from \*\*\* percent to \*\*\* percent.<sup>234</sup>

The volume of non-subject imports also increased steadily over the POI, from \*\*\* units in 1997 to \*\*\* units in 1999.<sup>235</sup> As between the interim periods, the volume of non-subject imports increased from \*\*\* units in interim 1999 to \*\*\* units in interim 2000.<sup>236</sup> However, while the volume of non-subject imports increased, non-subject imports' share of the U.S. market remained relatively steady over the POI, at \*\*\* percent in 1997 and \*\*\* percent in 1999.<sup>237</sup> As between the interim periods, non-subject imports' U.S. market share increased from \*\*\* percent in interim 1999 to \*\*\* percent in interim 2000.<sup>238</sup>

The limited record also indicates that most of the decline in domestic shipments over the POI was attributable to a decline in shipments by De La Rue U.S., which dropped by \*\*\* percent from 1997 to 1999; at the same time, Cummins-Allison Corp. ("CA") increased its domestic counter shipments by \*\*\* percent over the POI.<sup>239</sup> In contrast, domestic producers' U.S. shipments of scanners grew by \*\*\* percent from 1997 to 1999, before falling by \*\*\* percent as between the interim periods.<sup>240</sup> Nonetheless, the limited record evidence indicates that the domestic industry as a whole, encompassing production of both counters and scanners, lost U.S. market share as subject imports gained market share, while non-subject imports' U.S. market share was relatively unchanged. While the volume of subject imports may be significant when viewed in isolation, in the context of the instant investigations, the volume of subject imports does not appear significant in an assessment of a reasonable indication of present material injury, as elaborated upon below.

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<sup>233</sup> CR & PR at Table C-3.

<sup>234</sup> CR & PR at Table C-3.

<sup>235</sup> CR & PR at Table C-3.

<sup>236</sup> CR & PR at Table C-3.

<sup>237</sup> CR & PR at Table C-3.

<sup>238</sup> CR & PR at Table C-3.

<sup>239</sup> De La Rue U.S. Questionnaire Response; Cummins-Allison Questionnaire Response. De La Rue U.S.'s decline in domestic production and domestic shipments was partially the result of consolidation after De La Rue U.S. purchased domestic producer Brandt in 1995, and partially the result of De La Rue U.S.'s increased imports of subject counters and scanners. See CR at III-2 and De La Rue U.S. Questionnaire Response.

<sup>240</sup> CR & PR at Table C-2.

## **B. PRICE EFFECTS OF THE SUBJECT IMPORTS**

Although there is considerable pricing data in these investigations, product mix differences make meaningful direct comparisons between subject imports and the domestic like product nearly impossible.<sup>241</sup> Nonetheless, the pricing data do provide a sufficiently reliable indicator of general pricing trends over the POI when analyzed on a company by company and product by product basis.

Importantly, such trends present a mixed picture for the two largest domestic producers, CA and De La Rue U.S. The trends indicate that while CA's prices for counters declined somewhat over the POI, its prices for scanners increased.<sup>242</sup> With respect to De La Rue U.S., its pricing trends indicate that the prices De La Rue U.S. received for its counters increased over the POI.<sup>243</sup> And while De La Rue U.S. stopped producing scanners in 1998, the prices it received for these products were rising up to the time production ceased.<sup>244</sup>

With respect to subject imports, prices for both counters and scanners generally declined modestly over the POI.<sup>245</sup> Importantly, subject imports of counters consistently undersold the domestic like product by considerable margins.<sup>246</sup> However, because there were no significant declines in prices for either subject imports or the domestic like product over the POI, any causal connection between margins of underselling and negative price effects is not apparent from the limited record. With respect to scanners, subject imports consistently oversold the domestic like product.<sup>247</sup>

Accordingly, I find that subject imports are not having significant negative price effects in the U.S. market.

## **C. IMPACT**

The indicia of the health of the domestic industry indicate that the domestic industry is relatively healthy. For example, over the POI, domestic industry operating margins improved from \*\*\* percent in 1997 to \*\*\* percent in 1999.<sup>248</sup> However, as between the interim periods, operating margins did decline modestly from \*\*\* percent in interim 1999 to \*\*\* percent in interim 2000.<sup>249</sup>

In addition, consistent with my above finding of no significant price effects, the limited record provides no basis upon which to find that subject imports had a significant adverse impact on the domestic industry. In the absence of any volume or pricing data which evidence some causal connection between subject imports and an alleged declining condition of the domestic injury, the limited record does not support a finding of a reasonable indication of present material injury.

Accordingly, and based upon all of the foregoing, I find that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports and no likelihood exists that

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<sup>241</sup> Although I find that there is no likelihood that contrary evidence will arise in any final investigations regarding my negative present material injury determinations, I recognize that the questions regarding the quality and comparability of pricing data warrant further investigation in the context of my reasonable indication of threat of material injury analysis.

<sup>242</sup> CR & PR at Tables V-1-V-7.

<sup>243</sup> CR & PR at Tables V-1-V-7.

<sup>244</sup> CR & PR at Tables V-8-V-9.

<sup>245</sup> CR & PR at Tables V-1-V-9.

<sup>246</sup> CR & PR at Tables V-1-V-7.

<sup>247</sup> CR & PR at Tables V-8-V-9.

<sup>248</sup> CR & PR at Table C-3.

<sup>249</sup> CR & PR at Table C-3.

contrary evidence will arise in any final phase investigations. I note in this regard, recognizing the unresolved issues discussed earlier, that I would have reached the same conclusion had I found two like products and/or excluded De La Rue U.S. from the domestic industry.

#### **IV. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS FROM CHINA, KOREA, AND THE UNITED KINGDOM**

##### **A. CUMULATION FOR PURPOSES OF THREAT ANALYSIS**

Cumulation in the context of the Commission's threat analysis is provided for in Section 771(7)(H) of the Act. This provision leaves to the Commission's discretion cumulation of imports in analyzing threat of material injury. In evaluating cumulation for purposes of the threat of material injury I am mindful of the Commission's analysis justifying cumulation of subject imports for purposes of assessing present material injury.

In these investigations, and as discussed in detail in the Commission majority's present material injury cumulation discussion, the limited record indicates that subject imports appear to be moderately interchangeable with the domestic like product and each other. The limited record also indicates that there is a geographic overlap in sales between subject imports and the domestic like product<sup>250</sup> and subject imports from all three countries were simultaneously present in the U.S. market.<sup>251</sup> Finally, the limited record indicates that there are similarities in channels of distribution between the subject imports and the domestic like product.

Accordingly, I find a reasonable overlap of competition among subject imports and between subject imports and the domestic like product. I therefore exercise my discretion to cumulate all subject countries in analyzing threat of material injury in these investigations.

##### **B. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS FROM CHINA, KOREA, AND THE UNITED KINGDOM**

While I find no reasonable indication that the domestic industry is presently materially injured by reason of subject imports, the limited record indicates that the steady increase in the volume of subject imports over the POI imminently threatens the domestic industry with material injury. In this context, I again point out that, based on the limited record evidence, I am unable to affirmatively state that in the context of a threat of material injury analysis there is no likelihood that contrary evidence will arise in any final phase investigations. I therefore determine that there is a reasonable indication that the domestic industry is threatened with material injury.

As detailed above, both the volume and U.S. market share of subject imports increased steadily over the POI, particularly with respect to subject imports from Korea, and there is no evidence which indicates that such trends are likely to change in the imminent future. In addition, while there were no imports of scanners from either China or Korea during the POI, both countries do produce scanners.<sup>252</sup> The record also indicates that counters and scanners are generally produced on the same production lines<sup>253</sup>

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<sup>250</sup> CR at V-2, PR at V-1.

<sup>251</sup> CR and PR Table C-6.

<sup>252</sup> CR & PR at Table C-2.

<sup>253</sup> CR at I-5, PR at I-3.

and the only physical difference between counters and scanners is that scanners include the addition of an electronic sensor and scanning software to the basic counter.<sup>254</sup>

The limited record also indicates that in 1999, China's counter production capacity was 19,300 units, and its counter capacity utilization rate was 73.2 percent.<sup>255</sup> That same year, China's scanner production capacity was \*\*\* units, and its scanner capacity utilization rate was \*\*\* percent.<sup>256</sup> The limited record therefore indicates that China has the potential to significantly increase the volume of both its counter and scanner production for export to the United States. As a measure of the significance of Chinese production capacity, total U.S. apparent consumption of both counters and scanners was \*\*\* units in 1999.<sup>257</sup>

Also in 1999, Korea's counter production capacity was 23,000 units, and its counter capacity utilization rate was 78.8 percent.<sup>258</sup> That same year, Korea's scanner production capacity was \*\*\* units.<sup>259</sup> However, as discussed above, the limited record indicates that \*\*\*. Therefore, it appears that Korea has the ability to \*\*\*. The limited record therefore indicates that Korea has the potential to significantly increase the volume of \*\*\* production for export to the United States.

In 1999, the United Kingdom's counter production capacity was \*\*\* units, and its counter capacity utilization rate was \*\*\* percent.<sup>260</sup> That same year, the United Kingdom's scanner production capacity was \*\*\* units, and its scanner capacity utilization rate was \*\*\* percent.<sup>261</sup> The limited record therefore indicates that the United Kingdom has the potential to significantly increase the volume of both its counter and scanner production for export to the United States.

I also note that importers' inventories of subject merchandise, as between the interim periods, increased from \*\*\* units in interim 1999 to \*\*\* units in interim 2000.<sup>262</sup> The ratios of importers' counter inventories to U.S. shipments of imports were \*\*\* percent in interim 1999 and \*\*\* percent in interim 2000.<sup>263</sup> The ratios of importers' scanner inventories to U.S. shipments of imports were \*\*\* percent in interim 1999 and \*\*\* percent in interim 2000.<sup>264</sup> I therefore find that the upward trends in importers' inventories in the interim periods further indicate a threat of material injury by reason of subject imports.

In addition, although subject imports did not have significant negative price effects in the U.S. market over the POI, I find that if the trend of increasing subject imports continues, as appears evident, there will be an oversupply in the U.S. market, resulting in measurable price declines in the imminent future.

I also find that while the domestic industry was able to offset its declines in profitability in the counter segment of its production by large gains in the scanner segment, the increased erosion of counter segment market share (and loss of market share in the scanner segment if Chinese and Korean producers begin to import scanners into the United States) would likely adversely impact the domestic industry's performance in the imminent future. Additionally, the deterioration of the domestic industry's performance trends during the most recent period, which coincided with an upward trend in the volume of subject

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<sup>254</sup> CR at I-6-I-7, PR at I-5-I-6.

<sup>255</sup> CR & PR at Tables VII-1-VII-2.

<sup>256</sup> CR & PR at Table VII-2.

<sup>257</sup> CR & PR at Table C-3.

<sup>258</sup> CR & PR at Table VII-3.

<sup>259</sup> CR & PR at Table VII-4.

<sup>260</sup> CR & PR at Table VII-5.

<sup>261</sup> CR & PR at Table VII-6.

<sup>262</sup> CR & PR at Table C-3.

<sup>263</sup> CR & PR at Tables VII-7-VII-8.

<sup>264</sup> CR & PR at Tables VII-7-VII-8.



imports, indicates possible imminent difficulties, and therefore supports a finding of a reasonable indication of the threat of material injury by reason of subject imports.

Therefore, based on the limited record in this preliminary phase of the investigations, I find that there is a reasonable indication that domestic producers are threatened with material injury by reason of subject imports from China, Korea, and the United Kingdom.

## **V. CONCLUSION**

Based upon the foregoing analysis, I determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of desktop note counters and scanners from China, Korea, and the United Kingdom.